

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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GARY FELSCHOW,

Plaintiff,

v.

**ORDER**  
04-CV-929S

JO ANNE B. BARNHART,

Defendant.

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1. On November 23, 2004, Plaintiff commenced this action seeking review of a Social Security Administrative Law Judge's determination that he is not disabled within the meaning of the Social Security Act. This case was originally assigned to Chief District Judge Richard J. Arcara, who on February 7, 2005, referred this matter to United States Magistrate Judge Hugh B. Scott, for all proceedings necessary for a determination of the factual and legal issues presented, and to prepare and submit a report and recommendation containing findings of fact, conclusions of law and a recommended disposition of the case pursuant to 28 U.S.C. § 636(b)(1)(B).

2. On June 23, 2005, Defendant filed a Motion for Judgment on the Pleadings. (See Docket No. 7.) Thereafter, on June 27, 2005, Plaintiff filed his own Motion for Judgment on the Pleadings. (See Docket No. 10.) Judge Scott heard oral argument on August 18, 2005, and reserved decision at that time.

3. On December 21, 2006, Chief Judge Arcara transferred this case to this Court. (See Docket No. 16.) On January 10, 2007, Judge Scott filed a Report and Recommendation recommending that Defendant's motion be denied, that Plaintiff's motion

be granted, and that this case be remanded to the Commissioner of Social Security for the calculation of benefits. (See Docket No. 17.)

4. No objections to the Report and Recommendation were received from either party within ten (10) days from the date of its service, in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

IT HEREBY IS ORDERED, that this Court accepts Judge Scott's Report and Recommendation (Docket No. 17) in its entirety.

FURTHER, that Defendant's Motion for Judgment on the Pleadings (Docket No. 7) is DENIED.

FURTHER, that Plaintiff's Motion for Judgment on the Pleadings (Docket No. 10) is GRANTED.

FURTHER, that for the reasons stated in Judge Scott's Report and Recommendation, this case is REMANDED to the Commissioner of Social Security for the calculation of Plaintiff's benefits.

FURTHER, that the Clerk of the Court shall close this case.

SO ORDERED.

Dated: January 31, 2007  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge